

ALBERT SIROIS – RESIDENTIAL OVERBOARD DISCHARGE PERMIT RENEWAL  
DEP APPROVAL #W-003648-5A-D-R (appeal submitted by Herman Turndorf)

- Draft Proposed Board Order



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
17 STATE HOUSE STATION  
AUGUSTA, ME 04333

PROPOSED  
BOARD ORDER

IN THE MATTER OF

ALBERT SIROIS	)	PROTECTION AND IMPROVEMENT
BOOTHBAY, LINCOLN COUNTY, MAINE	)	OF WATERS
RESIDENTIAL OVERBOARD DISCHARGE	)	WASTE DISCHARGE LICENSE
#W003648-5A-E-Z	)	FINDINGS OF FACT AND ORDER
	)	ON APPEAL

Pursuant to the provisions of *Board responsibilities and duties*, 38 M.R.S.A. § 341-D(4), *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 2 (effective April 1, 2003), *Applications for Waste Discharge Licenses*, 06-096 CMR 521 (effective January 12, 2001), *Application Processing Procedures for Waste Discharge Licenses*, 06-096 CMR 522 (effective January 12, 2001), *Overboard discharges: licenses and abandonment*, 06-096 CMR 596(6)(B)(2) (last amended November 27, 2004), the Board of Environmental Protection (Board) has considered the appeal of HERMAN TURNDORF of Department of Environmental Protection (Department) February 3, 2010 Order approving the discharge of secondary treated sanitary wastewater from a residential overboard discharge (OBD) to the Little River, Class SB, in Boothbay, Maine. Based on a review of the materials submitted by the appellant and the applicant, and other related materials on file the Board makes the following findings:

1. PROCEDURAL HISTORY

- A. On January 13, 2010, the Department received and accepted as complete for processing an application from Albert Sirois for renewal of Waste Discharge License #W003648-5A-D-R, which was issued to the applicant on March 30, 1994, with a Corrected Order issued on May 11, 1994.
- B. The March 30, 1994 Waste Discharge License authorized the seasonally-restricted daily maximum discharge of 300 gallons per day of secondary treated sanitary wastewater from a residential OBD to the Little River in Boothbay, Maine. The May 11, 1994 Corrected Order changed the authorized discharge period from seasonal (May 1 through October 15 of each year) to year-round. There was no appeal of the March 30, 1994 license.
- C. On February 3, 2010, the Department issued Waste Discharge License #W003648-5A-D-R to the applicant, Albert Sirois, for the year-round discharge of up to 300 gallons per day of secondary treated sanitary wastewater from a residential single-family dwelling to the Little River in Boothbay, Maine.

- D. By letter dated February 3, 2010, an abutting property owner, Dr. Herman Turndorf, requested a public hearing on the January 13, 2010 license application. Dr. Turndorf stated that the issue of improper transfer of the license issued to Albert Sirois was among the issues to be raised on the pending application. The February 3, 2010 Waste Discharge License had been signed by the Commissioner before Department staff received Dr. Turndorf's February 3, 2010 public hearing request.
- E. By letter dated March 4, 2010, Dr. Herman Turndorf filed a timely appeal of the February 3, 2010 Waste Discharge License. The bases for the appeal are: 1) the licensee, Albert Sirois, no longer owns (*i.e.* possesses title, right or interest) the property containing the OBD; 2) the Department issued a final decision on Mr. Sirois' application before expiration of the 30-day period for public comment during which a hearing may be requested pursuant to 06-096 CMR 522(8)(b)(1); 3) the structure on the subject property is not a year-round residence and the license should not authorize the discharge on a year-round basis; and 4) the licensee has not satisfactorily demonstrated, based on documentation from a licensed site evaluator experienced in designing replacement systems for overboard discharges, that there are no technologically-proven alternative methods of wastewater disposal consistent with the plumbing code adopted by the Department of Health and Human Services pursuant to Title 22, section 42 that could result in elimination of the overboard discharge, if installed. The written appeal was accompanied by proposed supplemental evidence consisting of 18 exhibits.
- F. By letter dated March 4, 2010, the licensee, Albert Sirois, filed a response addressing the admissibility of the appellant's proposed supplemental evidence.
- G. By letter dated June 22, 2010, the Board Chair ruled on the admissibility of supplemental evidence proposed by the appellant. The Board Chair found that all but four of the exhibits were already part of the Department's licensing record and ruled that supplemental evidence Exhibits I, K, L and M were admitted as potentially relevant information. The Chair further noted that the only matter before the Board in this appeal is whether the February 3, 2010 license was properly issued under 38 M.R.S.A. § 413 and 06-096 CMR 596. The licensee was given 20 days to file a complete response to all the issues raised in the appeal.
- H. By letter dated July 12, 2010, the licensee, Albert Sirois, responded to the March 4, 2010 appeal filed by Dr. Herman Turndorf. Appended to his response were two exhibits that are not in the licensing record. By letter dated August 19, 2010, the Board Chair determined that the exhibits were not timely proposed as supplemental evidence under 06-096 CMR 2(24)(B); therefore, the two exhibits were not admitted to the record.

## 2. APPLICABLE STANDARDS OF APPEAL

38 M.R.S.A. § 341-D(4) provides that, in acting on an appeal, "*The board shall review, may hold a hearing at its discretion on and may affirm, amend, reverse or remand to the commissioner for further proceedings... 'final license or permit decisions made by the commissioner when a person aggrieved by a decision of the commissioner appeals that decision to the board within 30 days of the filing of the decision with the board staff.'*"

### 3. STANDING AND TIMELINESS

The Board finds that Herman Turndorf, as an abutter to the property to the property that is the subject of this appeal, is aggrieved by the Department's February 3, 2010 Waste Discharge License and has standing to bring this appeal before the Board. The appeal is timely.

### 4. DISCUSSION

The renewal application for a Waste Discharge License submitted and signed by Albert Sirois was accepted as complete for processing on January 13, 2010. As required by 06-096 CMR 521(5)(d), Albert Sirois certified that the information submitted in the application was true, accurate and complete. The applicant certified the licensing number for the existing Waste Discharge License dated March 30, 1994, and indicated that the application was not for the transfer of an existing license. The Department's administrative record contained of Albert Sirois' ownership of the subject property that was considered during the processing of the application associated with the March 30, 1994 license. At no time during the processing of the January 13, 2010 application did Albert Sirois inform the Department that he was not the current owner of the subject property. Nor did he provide other evidence of title, right or interest in the subject property pursuant to 06-096 CMR 2(11)(D). Based on the request for renewal of an existing Waste Discharge License, the certified statement that the application was not for transfer of the existing license, and the Department's records regarding ownership of the subject property, the Department processed the January 13, 2010 application and a straightforward application for renewal and, on February 3, 2010, issued a Waste Discharge License to Albert Sirois.

After issuing the license Department staff learned that Albert Sirois is not the owner of the property that is the subject of the February 3, 2010 Waste Discharge License. Exhibit I, which was admitted into the record on appeal, indicates that Albert Sirois and Agnes Sirois transferred the subject property to Sirois Associates, a Maine corporation, by Warranty Deed dated October 23, 1987.

Maine law provides that when a property, facility or structure that is the source of a licensed waste discharge is transferred, the new owner must apply to the Department for transfer of the existing license no later than 2 weeks after transfer of ownership or interest in the source of the discharge is completed. 38 M.R.S.A. § 413(3). There is a transfer in ownership when there is a change in the legal entity that owns the property. 38 M.R.S.A. § 361-A. Here the subject property was transferred from two individuals to a corporation, which is indisputably a separate legal entity. The fact that Albert Sirois is a majority shareholder and controlling owner of the corporation, and its authorized representative and clerk, does not alter this conclusion.

By the same token, Albert Sirois' position within the corporation does not prove sufficient title, right and interest in property owned by the corporation for purposes of obtaining a license. Under the Department's rules, title, right or interest in property is demonstrated by, among other methods, a deed or easement to the property, a lease on the property, or an option to buy or lease the property. 06-096 CMR 2(11)(D). Albert Sirois has not made any such demonstration.

009

Had Department staff become aware during the processing of the January 13, 2010 application that the subject property is owned by Sirois Associates, not the applicant Albert Sirois, the Department would have returned the application pursuant to 06-096 CMR 2(11)(D) due to the applicant's lack of title, right or interest in the subject property and advised Albert Sirois that the current owner Sirois Associates must submit an application for renewal and transfer of the March 30, 1994 Waste Discharge License.

The Board finds that the renewal application submitted by Albert Sirois should never have been accepted as complete for processing in the first instance, due to the applicant's lack of title, right and interest. On this ground alone, the Board finds that the Department did not have legal authority to issue the February 3, 2010 Order. The Board does not make any findings on any of the other objections raised on appeal.

THEREFORE, the Board VACATES Department Order #W003648-5A-D-R, dated February 3, 2010.

DONE AND DATED AT AUGUSTA, MAINE, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2010.

BOARD OF ENVIRONMENTAL PROTECTION

BY: \_\_\_\_\_  
Susan Lessard, Chair

010